

**FINDING OF NO SIGNIFICANT IMPACT**

**UNITED STATES DEPARTMENT OF AGRICULTURE  
RURAL UTILITIES SERVICE**

**ENERGY EFFICIENCY AND CONSERVATION LOAN PROGRAM**

**PROGRAMMATIC ENVIRONMENTAL ASSESSMENT**

**ENGINEERING AND ENVIRONMENTAL STAFF  
RURAL UTILITIES SERVICE**

**June 2013**

## Background

The U.S. Department of Agriculture (USDA), Rural Utilities Service (RUS) has published a draft rule for implementing a program that will provide financial assistance through loans and loan guarantees (loans) to support a new energy efficiency and conservation loan program (EECLP). The EECLP would enable rural electric utilities (Primary Recipients) to finance, sponsor, and implement energy efficiency and conservation activities for the benefit of rural consumers (Ultimate Recipients) in their service territories. RUS issued a Notice of Proposed Rulemaking to add subpart H to the final rule, 7 CFR part 1710, "General and Pre-Loan Policies and Procedures Common to Electric Loans and Guarantees." Under Section 2 of the Rural Electrification Act of 1936, (7 U.S.C. 901 et seq.), as amended (RE Act), RUS is authorized to assist rural electric utility borrowers in implementing demand-side management, energy efficiency and conservation programs, and on-grid and off-grid renewable energy systems. Subpart H defines RUS's EECLP, giving RUS the authority to provide financial assistance to Primary Recipients, who would act as intermediary lenders, passing on financial assistance for eligible energy efficiency and conservation improvements to be implemented at the Ultimate Recipients' premises.

RUS prepared a programmatic environmental assessment (PEA) for the proposed new EECLP as part of the rulemaking process in accordance with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 et seq.), the Council on Environmental Quality (CEQ) regulations implementing NEPA (40 CFR parts 1500-1508), and RUS's "Environmental Policies and Procedures" (7 CFR part 1794). Because this PEA covers a new agency program, it has been prepared in accordance with the following provisions of the CEQ regulations:

- 40 CFR §1502.4(b), which states that environmental documents "may be prepared, and are sometimes required, for broad Federal actions such as the adoption of new agency programs or regulations (§ 1508.18). Agencies shall prepare...[environmental documents] on broad actions so that they are relevant to policy and are timed to coincide with meaningful points in agency planning and decisionmaking."
- 40 CFR § 1502.4(c)(2), which states: "When preparing statements on broad actions ...agencies may find it useful to evaluate the proposal(s)...[g]enerically, including actions which have relevant similarities."
- 40 CFR § 1502.4(d), which states: "Agencies shall as appropriate employ...tiering (§ 1502.20) and other methods listed in § 1500.4 to relate broad and narrow actions and to avoid duplication and delay."
- 40 CFR § 1500.4, which states that agencies shall reduce excessive paperwork by "...[u]sing program...environmental [documents] and tiering from [these documents] of broad scope to those of narrower scope, to eliminate repetitive discussions of the same issues (§§ 1502.4 and 1502.20)."

In accordance with CEQ regulations compelling Federal agencies to reduce excessive paperwork, duplication of effort, and to promote a more efficient decision-making process for program implementation, the PEA provides programmatic, broad-scope

environmental analysis of the agency's proposed new EECLP. This PEA evaluated two alternatives – The “No Action Alternative” and the “Proposed Action” to establish an EECLP as authorized by the 2008 Farm Bill.

### Description of Proposed New Program

Under the authority of the 2008 Farm Bill's provisions amending the RE Act, RUS proposes to amend 7 CFR part 1710 by adding a new subpart H entitled “Energy Efficiency and Conservation Loan Program,” which would expand upon policies and procedures specific to loans for a new EECLP. This program would allow new financing opportunities for RUS borrowers to provide energy efficiency and conservation activities to businesses and homeowners in rural America. EECLP investments would include the eligible purposes of demand-side management (DSM) and energy conservation as well as investments resulting in better management of existing energy loads or a reduction in investments needed for additional electric facilities. Under the EECLP, new and existing Primary Recipients would initiate applications for participation by submitting an EECLP work plan (EEWP). New Primary Recipients – those who are not already RUS borrowers – would include only applicants who are willing to use a mortgage as collateral for the loan with the understanding that RUS's approval would incorporate a mortgage filed in all counties where the applicant has real property. EEWPs would describe EECLP activities the Primary Recipient proposes to implement in their service territories, and would be submitted to RUS with other supporting documents as defined in the proposed subpart H. Upon approval of application materials, RUS would provide loans to Primary Recipients, who would act as intermediaries to finance or otherwise fund eligible EECLP activities to Ultimate Recipients, as detailed in their approved EEWP.

The process for applying for EECLP loans is intended to largely conform to RUS's existing process for loans relating to other eligible purposes. The proposed subpart H is not intended to duplicate requirements otherwise prescribed in 7 CFR part 1710, but rather draws on existing requirements and supplements them as necessary to apply to the EECLP program. Subpart H addresses Federal requirements that apply to RUS loans to Primary Recipients who act as intermediary lenders to make EECLP investments to Ultimate Recipients in their service area. Where there is an express conflict with requirements elsewhere in 7 CFR part 1710, the provisions of the proposed subpart H would apply, but otherwise subpart H is not intended to supplant the applicability of the rest of 7 CFR part 1710 or any other applicable parts in the Code of Federal Regulations.

Energy Efficiency is defined in the proposed subpart H as the degree a system or component performs its designated function with minimum consumption of resources. This term is also used to describe eligible load modification investments. A program to finance photovoltaic (solar) installations, for example, would typically be classified as distributed renewable generation, not an energy efficiency measure. Distributed solar investments, however, including those made by individual consumers, may also have a positive impact on an interconnected utility's energy load profile and/or facilitate its DSM. Therefore, these types of renewable energy systems would be eligible activities

under the EECLP where any associated power flow from them into the grid is incidental. Conversely, renewable energy systems, including small-scale systems, which are constructed with the primary purpose of supplying energy to the grid, would not be considered an energy efficiency investment under the EECLP, because these systems are already covered by existing RUS's loan programs that finance renewable energy systems for generation purposes.

The operative distinctions between eligible EECLP investments and other RUS loan programs are: 1) the EECLP assets would usually be on the consumer side of the meter; and 2) to the extent these assets deliver electricity to the grid, it will not exceed an incidental amount.

A detailed description of proposed eligible activities and methods of implementing the EECLP may be found in Section 2.2 of Chapter 2.0, "Alternatives Considered," of the PEA. The list of eligible EECLP activities and resulting assets that may be financed under the provisions of subpart H is not intended to be exhaustive. It is RUS's intent to facilitate flexibility for Primary Recipient's to propose and implement EECLP activities consistent with the utility's resources and its service territory's consumer energy use profiles.

### RUS NEPA Process

RUS made the PEA available for public review and comment for 30 days. RUS announced the availability of the PEA in the Federal Register on February 6, 2013 and accepted comments until March 8, 2013. RUS made the PEA available for viewing on its website or as a hardcopy by request. RUS received comments from two interested parties during the 30-day public comment period. A summary of the comments follows.

#### *Commenter 1: Commonwealth of Virginia*

The Department of Environmental Quality (DEQ) for the Commonwealth of Virginia solicited and compiled comments from multiple State agencies and then transmitted the State's comments to RUS. State agencies' comments are grouped below by subject.

- *Subaqueous Lands Management and Dunes Management*  
The Virginia Marine Resources Commission (VMRC) responded with comments on subaqueous lands management and dunes management, stating that if any energy efficiency activity funded by the loan program would result in additional encroachment over State-owned submerged land or tidal wetlands or additional encroachment over beaches or dunes of Virginia, permits may be required from the VMRC.
- *Waste Management*  
DEQ's Division of Land Protection and Revitalization commented that "Inasmuch as no specific projects are identified in the PEA,...[they]... could not identify waste issues." They provided general guidance recommendations on waste management, including minimizing hazardous waste and recommendations for recycling and re-use.
- *Section 106 of the National Historic Preservation Act*

The Department of Historic Resources (DHR) commented that it will continue to work with the National Conference of State Historic Preservation Officers (NCSHPO) and RUS to develop and implement a nationwide Programmatic Agreement that will guide compliance with Section 106 of the National Historic Preservation Act.

- *Forest Resources, Wildlife Resources, Natural Heritage Resource, Erosion and Sediment Control (Stormwater Management), and Coastal Lands Management (Chesapeake Bay Preservation)* The Department of Forestry, Department of Game and Inland Fisheries, and Department of Conservation and Recreation each responded that they have no comments on the PEA.

*RUS Response to Commenter 1:*

As stated in the PEA, Primary Recipients must comply with all State and local laws, including permitting requirements, and must coordinate with agencies having jurisdiction over formally designated lands or agencies having regulatory jurisdiction or authority for the protection of the environment. RUS will continue to work with the NCSHPO and the Advisory Council on Historic Preservation (ACHP) on the development of the nationwide PA and appreciates the DHR's continued contributions to this endeavor.

*Commenter 2: Unaffiliated Individual*

One person, who did not claim affiliation with an organization, responded that they do not support USDA making loans to "highly profitable energy companies which are making a lot [sic] of money these days to pay for their own upgrading and repair." The commenter stated that the USDA should not be in the banking business, because the commenter believes that USDA loses money and therefore its financing practices adversely affect tax payers. The commenter also stated "I believe this is also an assault on wildlife and birds and trees."

*RUS Response to Commenter 2:*

As stated in the PEA, the USDA Rural Utilities Service Electric Program provides financial assistance through loans and loan guarantees primarily to not-for-profit electric utility cooperatives but also to other local government entities in rural areas. RUS does not provide assistance to for-profit energy companies. The RUS Electric Program loan portfolio includes over \$43 billion in assets, with a delinquency rate of less than 0.5%. Income from loans provides positive cash flow to the Federal government. Therefore the commenter's assumption that the program is losing money is incorrect.

The PEA analyzed effects to natural resources, including vegetation and wildlife, and did not identify any significant adverse effects. Additionally, mitigation measures were developed in the PEA to ensure protection of special status species, including threatened and endangered species (see below). Nothing in this comment presents substantive information on natural resources that would trigger RUS to revisit its findings on these resources.

*Mitigation Measures Identified in the PEA*

The following mitigation measures were developed to minimize the degree and/or severity of adverse effects, and would be implemented during all activities associated with implementation of the new EECLP as needed:

- *Land Use/Formally Designated Lands*  
RUS would provide guidance to Primary Recipients as part of the Environmental Compliance Tool Kit informing them of their obligations to coordinate with Federal, state, and local agencies for their approval of any activities that may occur on lands for which these agencies may have jurisdiction.
- *Indian Trust Resources*  
To ensure that RUS takes into consideration tribal concerns about EECLP activities and to maintain the government-to-government relationship between RUS and tribal sovereign nations, RUS would provide guidance to Primary Recipients as part of the Environmental Compliance Tool Kit for implementing activities on Indian lands. If necessary, mitigation measures for effects to tribal trust resources will be developed and implemented on a case-by-case basis.
- *Floodplains*  
No mitigation measures or further review of floodplain impacts is required if the EECLP activity is: 1) restricted to the footprint of existing structures, OR 2) not restricted to the footprint of existing structures, but a review of floodplain maps shows that the Ultimate Recipient's premises is not within a floodplain. In accordance with Rural Development Instruction 426.2 II.C, and under the authority of the National Flood Insurance Protection Act of 1968 as amended by the Flood Disaster Protection Act of 1973, RUS is prohibited from providing financial assistance to communities or individuals living within those communities that do not participate in the National Flood Insurance Program (NFIP) administered by the Federal Emergency Management Agency. Therefore, if a proposed EECLP activity does not meet either of the two exceptions listed above, and if a proposed structure cannot be placed outside a floodplain and if the community is participating in the NFIP, the Ultimate Recipient must obtain flood insurance if the structure is insurable.
- *Wetlands*  
No mitigation measures or further review of wetlands impacts is required if the EECLP activity is: 1) restricted to the footprint of the existing structures or area of previous disturbance, OR 2) not restricted to the footprint of existing structures or area of previous disturbance, but a review of NRCS soils maps (or any other available maps delineating wetlands whether jurisdictional or not) shows that the Ultimate Recipient's premises is not within a hydric soil unit which is one of the three positive indicators of identifying wetlands.

EECLP activities that involve new construction of facilities outside the footprint of existing structures or areas of previous disturbance would require a review of NRCS soil maps, other appropriate data or information to determine the

presence or absence of hydric soils or wetlands. The Environmental Compliance Tool Kit will provide guidance on using NRCS soils data and on interpreting U.S. Army Corps of Engineers (USACE) regulatory requirements for potential impacts to wetlands. If hydric soils or wetlands are present at a proposed project site and cannot be avoided, the tool kit will provide guidance on whether an existing USACE Nationwide Permit would apply to the action. If wetlands are potentially affected and if the proposed action is under the jurisdiction and authorized under the general conditions of a USACE Nationwide Permit(s), the tool kit would also provide a template Preconstruction Notice for a Primary or Ultimate Recipient to prepare and send to the USACE, District Engineer who has jurisdiction over the proposed project area.

- *Coastal Barrier Resources*

If a Primary Recipient has reason to believe that any of its Ultimate Recipients may have premises in a unit of the Coastal Barrier Resource System (CBRS), they will coordinate with RUS to consult with the U.S. Fish and Wildlife Service (USFWS). Under the Coastal Barrier Resources Act, designated units of the CBRS are ineligible for most new Federal expenditures and financial assistance, especially those that encourage new development. For specific actions, RUS, as appropriate, must receive written approval from the USFWS before taking any action within a unit of the CBRS.

- *Species of Concern*

To mitigate the potential for a "take" under the Endangered Species Act or Migratory Bird Treaty Act, the Environmental Compliance Tool Kit would provide guidance on identifying potential impacts to special status species that could result from EECLP activities. The tool kit would provide instructions on how to find site-specific information for a given activity and how and when to consult with the USFWS.

- *Health and Safety*

To mitigate the potential for exposure to lead paint, work that may disturb painted surfaces in pre-1978 structures would require lead testing prior to the beginning of work. If lead paint is found to be present after testing, all work that would disturb lead paint would be performed by a contractor with the appropriate lead certification.

Asbestos cannot be definitively identified in the field and requires testing at a certified laboratory. While some suspect ACM can be readily identified, such as vermiculite ceiling insulation, knowing where to take test samples of most suspect ACM requires inspection by a trained professional. To mitigate the potential for exposure to asbestos in structures built before 1981, the Primary Recipient or Ultimate Recipient would arrange for suspect ACM areas to be tested by a trained asbestos inspector prior to taking any activities that could disturb surfaces that may contain asbestos. If asbestos is found and if there is potential for it to be disturbed by a given activity, the asbestos must either be

avoided or must be removed by an asbestos remediation professional prior to the start of work on the project.

- *Historic Properties*

To meet RUS's responsibilities under Section 106 of the NHPA and its implementing regulation (36 CFR Part 800) for the EECLP and its activities, RUS is pursuing the development of a program alternative in accordance with 36 CFR § 800.14. In August 2012, RUS invited the ACHP, National Conference of State Historic Preservation Officers (NCSHPO), Indian tribes, and selected industry and tribal organizations to participate in consultation to develop this program alternative. With the invitation, RUS included a Conceptual Outline which described the EECLP and the challenges it presents for Section 106 review, and proposed that a nationwide Programmatic Agreement (PA) developed pursuant to 36 CFR § 800.14(b) would be the program alternative most appropriate for the EECLP. The objective of the program alternative is to streamline Section 106 review, focusing limited Federal, state and tribal resources where they are most needed. On August 23 and 24, 2012, RUS hosted a series of webinars for SHPOs and Indian tribes, respectively, to discuss and solicit their comments on the Conceptual Outline, on whether a nationwide PA might be an appropriate program alternative, and, if so, what topical areas a national PA should address.

Although few in number the comments on the Conceptual Outline received thus far have been supportive of the proposed approach, i.e., the need for streamlining especially given the large number of actions and reviews expected to be generated by EECLP activities, and for the development of a nationwide PA. Based on these comments, RUS is proceeding with development of the first draft of a nationwide PA.

While explicit terms of a nationwide PA have not yet been drafted, RUS recognizes, as presented in the Conceptual Outline, that any proposed program alternative must establish: 1) programmatic exemptions or thresholds for EECLP activities that have little or no potential to cause effects to historic properties; and 2) standard methods to treat defined categories of historic properties, activities, and effects.

As part of the Environmental Compliance Tool Kit, RUS will integrate specific Section 106 requirements and guidance to Primary Recipients for complying with the terms of a nationwide PA. Primary Recipients will be responsible for documenting activities that fall below any programmatic thresholds established in a nationwide PA. RUS will review the Primary Recipient's documentation of actions that fall below the thresholds prior to providing reimbursement with Federal funds.

Any EECLP activity for which exemptions and standard treatments are not applicable would be subject to Section 106 review under procedures established

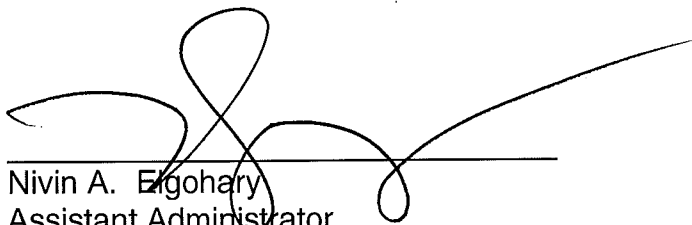
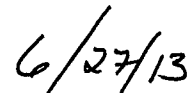


by a nationwide PA. Therefore, a national PA will define a clear threshold for direct RUS involvement in Section 106 review for individual EECLP actions.

### *Conclusion*

Based on analyses provided in the PEA, and in consideration of comments received, RUS has concluded that the implementation of the EECLP would have no significant impacts to land use, vegetation, fish and wildlife resources, special status species including federally listed threatened or endangered species, water quality, air quality, social or economic concerns, human health and safety, floodplains, wetlands, or important farmland. The proposed EECLP would not have disproportionate adverse environmental or human health impacts to minority populations or low-income populations.

No other potentially significant impacts resulting from the proposed EECLP have been identified. Therefore, RUS has determined that this finding of no significant impact fulfills its obligations under the National Environmental Policy Act, as amended (42 U.S.C. 4321 *et seq.*), the Council on Environmental Quality Regulations (40 CFR parts 1500-1508), and RUS's Environmental Policies and Procedures (7 CFR part 1794) for its action related to the proposed rulemaking. Because RUS's Federal action would not result in significant impacts to the quality of the human environment, RUS will not prepare an Environmental Impact Statement for the rulemaking to add subpart H to the final rule, 7 CFR part 1710, "General and Pre-Loan Policies and Procedures Common to Electric Loans and Guarantees," for the RUS Electric Program's EECLP.

  
\_\_\_\_\_  
Nivin A. Engohary  
Assistant Administrator  
Electric Program  
Rural Utilities Service  
\_\_\_\_\_  
Date

